

AFTERMARKET CRASH PARTS



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Representative Mark R. Ogles, Chairman
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TABLE OF CONTENTS

I. Introduction	1
II. Summary	3
III. Statutory Law	6
A. Motor Vehicle Repair Act	6
B. Aftermarket Crash Parts Act	7
C. Proposed Legislation	9
IV. Findings	10
A. The Debate	10
B. Aftermarket Crash Parts - What are they?	12
C. Safety Concerns	14
D. Warranty Provisions	17
E. Cost Factors	20
F. Insurance Coverage	22
G. Quality	24
H. Disclosure	30
V. Conclusions	32
VI. Policy Options	33

I. Introduction

Consumers love their vehicles, cars, trucks, vans, SUVs., and the sale of motor vehicles is big business in Florida, in the U.S., and worldwide. The repair of these vehicles is also big business. "It takes more than 60 million sheet-metal and plastic auto body parts valued at about three billion dollars to repair the damage on insured vehicles caused by 15 million accidents each year, according to the National Association of Independent Insurers. Consumer Reports estimates that it costs nine billion dollars to repair the damage caused by an estimated 35 million accidents annually."¹

In Florida, the Department of Highway Safety and Motor Vehicles (DHSMV) reports that as of August 10, 1999, there were a total of 18,308,808 titled/registered vehicles of all types in Florida. This total includes approximately 7.3 million non-commercial insured vehicles in Florida. Figures from Visit Florida tourist bureau add nearly two million visitor vehicles on average in any given month to the potential collision pool that exists on the state's highways. According to the Florida Department of Insurance (DOI), the automobile insurance industry writes coverage in Florida for total annual Private Passenger Auto (PPA) of nearly \$7.4 billion.²

The motor vehicle repair industry has long been the focus of consumer attention. Florida regulates the motor vehicle repair business, primarily, through part IX of chapter 559, F.S., the Motor Vehicle Repair Act. This act requires registration and regulation of motor vehicle repair shops by the Department of Agriculture and Consumer Services (DACS) and provides consumer protections by addressing disclosures and requirements for written repair estimates. The Florida Lemon Law³ provides statutory protections for consumers relating to the repair of new motor vehicles by manufacturers under certain circumstances.

The debate surrounding aftermarket crash parts relates to the type of non-mechanical replacement parts installed on a motor vehicle by a motor vehicle repair shop during collision repair work. The use of aftermarket crash parts in the repair of motor vehicles is regulated under ss. 501.30 - 501.34, F.S., the Aftermarket Crash Parts Act. Aftermarket crash parts are defined in s. 501.32, F.S., as the "replacement for any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels." OEM aftermarket crash parts are those made by the original manufacturer of the motor vehicle. "Non-original equipment

¹ "Collision Course", Bests Review, April, 1999, page 44.

² Figures provided by the Florida Department of Insurance, August, 1999.

³ Chapter 681, F.S., the "Motor Vehicle Warranty Enforcement Act."

manufacturer [non-OEM] aftermarket crash parts” are those made by a manufacturer other than the original manufacturer. OEM and non-OEM replacement parts constitute the collision repair of the exterior of a motor vehicle.

If non-OEM aftermarket crash parts are proposed to be used in a motor vehicle repair, the insurer or the repair shop performing the work is required to disclose that fact to the vehicle owner in a written estimate pursuant to s. 501.33, F.S. Any violation of this requirement is punishable under the Unfair Insurance Trade Practices Act (part X, chapter 626, F.S.) or the Florida Deceptive and Unfair Trade Practices Act (part II, chapter 501, F.S.).

During the 1999 legislative session, HB 1663 by Representative Bitner, relating to aftermarket crash parts, was filed. The bill would have prohibited insurers from requiring the use of a replacement part that is not an OEM new part for a period equal to a three year warranty for the vehicle.

The bill would have also required that the current aftermarket crash part disclosure contain a definition of the term “replacement crash parts,” a list of the types of crash parts listed on the customer’s estimate, and warranty information for the listed parts. The issues in the bill were controversial and the bill failed to pass. Representative Mark Ogles, Chairman of the House Committee on Business Regulation and Consumer Affairs, sponsored an amendment to include the issue within the committees’ consumer protection package, HB 1061. The amendment was adopted but the issue was subsequently removed from the bill by additional amendment. The companion bill to Representative Bitner’s bill, SB 2106 by Senator Horne, failed to pass the Senate.

The purpose of this project is to study the issues involved in the dispute between the use of OEM parts versus the use of non-OEM parts. This interim report is designed to present background information to the House members should the issue be revisited in the next legislative session.

II. Summary

The debate surrounding aftermarket crash parts relates to the type of non-mechanical replacement parts, such as fenders and hoods, installed on a motor vehicle by a motor vehicle repair shop during collision repair work. Generally, two categories of parts are identified. Parts produced by the original vehicle manufacturer (OEM) and parts made by a manufacturer other than the original manufacturer (non-OEM). Non-OEM parts are further separated into the categories of CAPA (Certified Automotive Parts Association) certified non-OEM parts and non-OEM parts which are not CAPA certified.

In 1989, the Florida legislature passed the Aftermarket Crash Parts Act which requires a disclosure to consumers when non-OEM parts are used in the repair of a motor vehicle. The debate in the Florida legislature regarding the use of OEM versus non-OEM crash parts has focused on the questions of safety, warranties, cost, insurance coverage, and quality. The current disclosure requirements of Florida law also continue to be debated.

Aftermarket crash parts, OEM and non-OEM, are NOT inspected by a government entity prior to their use in the market, either at the federal or state levels, for purposes of complying with safety standards or regulatory requirements. New vehicles must meet standards of the National Highway Traffic Safety Administration prior to sale and are subject to recall for identified problems. The option for safety inspections after new vehicles are sold is, generally, left up to the states.

Florida no longer has a statewide vehicle safety inspection program. Universally, safety inspection programs have focused on the mechanical, hard parts of a vehicle and not replacement crash parts, either OEM or non-OEM. The former statewide safety inspection program in Florida did not include OEM or non-OEM crash part safety inspections.

Warranties have been an important aspect of the debate over the use of aftermarket crash parts in Florida. This debate has addressed the question of whether the use of non-OEM parts would affect the warranty on the entire vehicle. The use of non-OEM parts generally does not violate or invalidate the original manufacturer's warranty. The federal Magnuson-Moss Warranty Act provides that no warrantor may condition the continued validity of a warranty on the use of only authorized repair service and/or authorized replacement parts for non-warranty service and maintenance.

Typical of any contract, the actual language of the warranty agreement has to be looked at for determination of what is specifically being warranted under what circumstances. Warranties for non-OEM parts vary based on the warrantor. Parts are warranted, as a practical matter, all the way through the distribution channel from the

manufacturer through the body shop, including the distributor and the insurer. A vehicle part is routinely multiple warranted.

Participants in the debate on aftermarket crash parts, generally, concede the cost of non-OEM crash parts is less than the cost of OEM crash parts. Non-OEM parts can cost anywhere from 20 to 65 percent less than OEM parts.

The Florida rating law and the excess profits law require significant information to be provided to the Department of Insurance (DOI). However, specific cost analysis data for the use of OEM versus non-OEM crash parts is not required and is not specifically reported to the department except as data included within broader reporting categories. Data filed with the department does not lend itself to analysis of insurance rate filings for purposes of determining the cost impact of the use of OEM versus non-OEM crash parts.

The rules of DOI prevent insurers from requiring the use of particular replacement parts in the repair of an automobile unless the parts are at least equal in kind and quality to the original parts in terms of fit, quality, and performance. The debate on quality centers on different perceptions and experiences relating to the use of OEM versus non-OEM parts. Different tests have yielded different results. Different repair shops have different experiences. Different insurers insure and warrant parts differently. Different manufacturers have different opinions.

Several lawsuits have been filed relating to the issues of quality. A class action suit is currently underway in Illinois. Additionally, several individual suits have been filed in Florida. The impact of these and other lawsuits on the debate relating to the use of aftermarket crash parts is unknown. There is some sentiment that these actions will clearly define the issues. Others feel the courts will not put a dent in the debate.

Currently, there is no federal law which directly references the use of non-OEM crash parts. Among the states, disclosure is the most prevalent form of consumer protection. Florida's disclosure law is closely tailored after the National Association of Insurance Commissioners (NAIC) model legislation which has been adopted in the majority of the states. In addition to disclosure, several states require consent on the part of the consumer prior to the use of non-OEM parts.

Modifications to the current provisions of the Florida Statutes relating to aftermarket crash parts have been debated, however, none have been adopted to date. There is sentiment that the language of the current statutes is adequate and provides satisfactory consumer protections. Others feel that changes to the current disclosure laws could further protect and benefit consumers. Policy options exist based on the recognition or perception of problems and desirable alternatives.

Several options are identified in this report to include the following:

- A. The aftermarket crash part statute could be modified to include a definition of motor vehicle to clarify the exclusion of certain vehicles such as construction equipment.
- B. A safety inspection program could be implemented for collision repair at certified body shops with shop employees being trained as state inspectors.
- C. Warranty provisions could be statutorily outlined in order to create a clear lineage of responsibility for the replacement of repair parts.
- D. The Florida Insurance Code could be amended to require detailed loss cost data for purposes of analyzing premiums in relation to the use of OEM versus non-OEM parts.
- E. If it is determined that safety is compromised by the use of non-OEM parts and the use of OEM parts significantly increases the safety features of a motor vehicle, s. 627.0653, F.S., could be amended to provide for insurance discounts for the use of OEM replacement crash parts. Similar financial incentives are currently provided for certain motor vehicle safety equipment.
- F. The current disclosure requirement could be further amended to provide for consent or acknowledgment by the consumer prior to the use of non-OEM parts.

III. Statutory Law

A. Motor Vehicle Repair Act

Motor vehicle repair shops have been regulated in Florida since 1981.⁴ Businesses engaged in the maintenance, modification and repair of motor vehicles, and related diagnostic work, are required to register annually with the Department of Agriculture and Consumer Services (DACS), as provided in chapter 559, part IX, F.S. The definition of "motor vehicle" includes automobiles, trucks, buses, recreational vehicles and other motor powered vehicles. The definition specifically excludes certain classes of vehicles such as mobile homes, watercraft, aircraft and certain construction equipment. The law requires written repair estimates, disclosure statements, record keeping, and bonding for claims.

Though repair shops are required to be registered with DACS, there are no regulatory requirements relating to employees of these shops. Automotive repair technicians are not regulated by the state and are not required to be licensed, registered or trained in order to conduct their profession. Section 559.922, F.S., authorizes DACS to provide financial assistance to individuals who voluntarily participate in technical training or courses of study in motor vehicle repair. Currently, DACS does not provide assistance due to a lack of funding for this program.

The motor vehicle repair act further specifies unlawful acts and practices and remedies for violations. Section 559.920, F.S., provides that it is unlawful to make or charge for repairs which have not been expressly or impliedly authorized by the customer, misrepresent that repairs have been made to a motor vehicle, or misrepresent that certain parts and repairs are necessary to repair a vehicle, among others. These provisions do not specifically address the use of OEM or non-OEM parts.

Remedies are provided to allow a customer to bring a lawsuit in an appropriate court to allow the DACS to issue orders and impose fines, and to allow the Department of Highway Safety and Motor Vehicles (DHSMV) to impose penalties on motor vehicle dealers who are licensed by DHSMV.

Section 559.9221, F.S., provides for an 11 member advisory council to assist and advise the DACS in carrying out these provisions.

The number of motor vehicle repair shops that are registered currently totals nearly 23,000 shops statewide. This regulatory scheme was enacted in response to growing

⁴ Chapter 80-139, LOF, CS/HB 287, by the Committee on Regulated Industries and Licensing, Rep. Hector and others, was passed and became law on June 19, 1980. The bill had an effective date of January 1, 1981.

concerns relating to automobile repair complaints. The 1980 bill analysis for CS/HB 287, relating to the Motor Vehicle Repair Act, notes, "Motor vehicles are the number one cause of consumer complaints in Florida, and across the nation. Repair problems are a significant part of those complaints. It is estimated that unnecessary and unsatisfactory motor vehicle repairs in Florida cost consumers between \$328 million and \$1 billion annually."

B. Aftermarket Crash Parts Act

Prior to 1989, Florida statutory law was silent as to any reference to aftermarket crash parts. Issues regarding the use of aftermarket crash parts surfaced during the 1989 legislative session. In 1989, CS/SB 1414 was passed into law as chapter 89-241, Laws of Florida. The bill was codified as part III of chapter 501, F.S.⁵ The bill provided definitions, a disclosure when non-OEM parts are used in collision repair, and penalties.

The sponsor of the bill, Senator Bruner, explained the bill to the Senate Committee on Commerce as, "A bill to simply provide consumers in Florida with notice of what kind of replacement automobile parts are being put on their vehicles. It doesn't require that only United States made parts be put on the vehicle. It simply requires that you be notified of the type of automobile part that is being put on your vehicle and if it's a foreign part you'll know it's a foreign part. If it's not custom or the kind that is ordinarily affixed original original manufactured parts, you'll know about it."

Senator Bruner further explained the bill on the Senate floor, "This bill would simply require those companies who repair or replace parts on an automobile after it's been damaged to notify the individual who owns the car that they are replacing the part with a non-original replacement part. It doesn't prevent them from doing it, it simply gives the consumer notice that he is getting a non-original replacement part."

The act became effective on June 28, 1989, and consists of a short title, a statement of legislative purpose, definitions, disclosure requirements, and enforcement provisions. The stated purpose of the law is to, "regulate the use of aftermarket crash parts by requiring disclosure when any use is proposed in an insurance estimate of a non-original equipment manufacturer aftermarket crash part." (s. 501.31, F.S.)

Aftermarket crash parts are defined in s. 501.32, F.S., as the "replacement for any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels." OEM aftermarket crash parts are

⁵ The companion measure was HB 1166 by Representative Abrams. The bill was recommended favorably as a Committee Substitute by the House Banking and Insurance Subcommittee and by the full Committee on Commerce. The bill was withdrawn from the Appropriations Committee and placed on the House calendar. CS/SB 1414 was substituted for CS/HB 1166 on the House floor.

those made by the original manufacturer of the motor vehicle, but are not defined by statute. "Non-original equipment manufacturer [non-OEM] aftermarket crash parts" are defined as those parts made by a manufacturer other than the original manufacturer.

The law defines "insurer" as an insurance company or the company's claims representative. "Repair facility" is defined to mean a commercial facility which repairs or provides replacement parts for the exterior of a motor vehicle.

When the motor vehicle repair provisions of chapter 559, F.S., requires that a written estimate be prepared, the Aftermarket Crash Parts Act requires the insurer or the repair facility, or both, to provide a written disclosure as part of the repair estimate if non-OEM parts are to be used in the repair. The written estimate must include the following disclosure language in bold type:

THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF CRASH PARTS SUPPLIED BY A SOURCE OTHER THAN THE MANUFACTURER OF YOUR MOTOR VEHICLE. THE AFTERMARKET CRASH PARTS USED IN THE PREPARATION OF THIS ESTIMATE ARE WARRANTED BY THE MANUFACTURER OR DISTRIBUTOR OF SUCH PARTS RATHER THAN THE MANUFACTURER OF YOUR VEHICLE.

Further, the act provides remedies for violations. A violation by an insurer would subject the violator to the penalties of the Unfair Insurance Trade Practices Act under chapter 626, F.S. Maximum penalties include fines of \$10,000 for aggregate, non-willful violations and \$100,000 for aggregate, willful violations. It appears no penalties have been imposed pursuant to a violation of this disclosure requirement.

A violation by a repair facility would constitute a violation of the Florida Deceptive and Unfair Trade Practices Act, part II of chapter 501, F.S. Maximum penalties include fines of up to \$10,000 per violation for willful violations (s. 501.2075, F.S.) and \$15,000 if the violation is against a senior citizen or handicapped person (s. 501.2077, F.S.). A search of case data through the Office of the Attorney General did not identify any enforcement action taken pursuant to part II of chapter 501, F.S.

The Aftermarket Crash Part Act does not define the term "motor vehicle." The Motor Vehicle Repair Act broadly defines "motor vehicle" and provides several exemptions from the definition. The Department of Highway Safety and Motor Vehicles is authorized to enforce portions of the repair act, however, their authority under chapter 320, F.S., includes a separate statutory definition of motor vehicle. Golf carts, for instance, are considered motor vehicles under chapter 559, F.S. and chapter 320, F.S. The debate regarding the use of OEM versus non-OEM parts in collision repair has centered on private passenger automobiles, although the issues by definition could be applicable to other vehicles.

In order for the Aftermarket Crash Parts Act to apply to the repair of a motor vehicle the following elements must be present:

- * A manufacturer must produce a motor vehicle;
- * A different manufacturer must produce an aftermarket crash part for that motor vehicle; and
- * A repair shop or an insurer must provide a written estimate for the repair of a damaged motor vehicle using an aftermarket crash part.

When these factors are present, the disclosure requirements of the Aftermarket Crash Parts Act would have to be met.

C. Proposed Legislation

Subsequent to the original passage of the Aftermarket Crash Parts Act, additional debate was initiated regarding the use of OEM versus non-OEM crash parts. Legislation proposing to amend the act was filed in the 1996 and 1999 Legislative Sessions. However, changes to the law have not been enacted.

In 1996, companion bills were debated in committee in the House and the Senate. HB 2145 was filed by Representative Diaz de la Portilla and SB 1930 was filed by Senator Silver. The proposals would have required disclosure to a motor vehicle owner and written consent of the owner in the event non-OEM crash parts were to be used for repairs performed on a motor vehicle. The bills also would have prevented motor vehicle body shops and insurance companies from requiring the use of such parts unless the motor vehicle owner consented at the time of repair.

HB 2145 was referred to the House Committee on Agriculture and Consumer Services and was subreferred to the Subcommittee on Consumer Services. The bill was amended in subcommittee and recommended favorably. The full Committee on Agriculture and Consumer Services further amended the bill which was adopted as a committee substitute. A motion was made to reconsider the vote by which the bill passed and the bill was left pending in committee. At the next meeting of the committee, the bill was further debated and voted unfavorably.

SB 1930 was referred to the Senate Committee on Transportation and the Committee on Governmental Reform and Oversight. The bill was amended in the Committee on Transportation to require that the consumer be informed in writing of the difference in price between the non-OEM parts and the OEM parts estimated to be used in the repair. The bill passed the Committee on Transportation, but died in the Senate Committee on Governmental Reform and Oversight.

In 1999, bills were also filed. HB 1663, by Representative Bitner, and SB 2106, by Senator Horne, were filed as identical companion bills. The bills would have prohibited insurers from requiring the use of a replacement part that is not new, OEM equipment for a 3-year period equivalent to the initial 3-year manufacturer's warranty for the motor vehicle.

The disclosure provision also would have been revised to contained a definition of the term "replacement crash parts," a list of the types of crash parts listed on the customer's estimate, and to require warranty information for the listed parts. Non-OEM aftermarket crash parts used in this state would have had to be inscribed with the manufacturer's name or logo.

HB 1663 was referred to the House Committee on Insurance and the House Committee on Business Regulation and Consumer Affairs. The bill was scheduled for hearing on several occasions, but was not debated in committee and died in the Committee on Insurance.

SB 2106 was referred to the Senate Committee on Agriculture and Consumer Services, the Senate Committee on Banking and Insurance, and the Senate Committee on Transportation. After lengthy debate and parliamentary maneuvering, the bill was reported unfavorably by the Committee on Agriculture and Consumer Services.

Additionally during the 1999 Legislative Session, HB 1061 by the House Committee on Business Regulation and Consumer Affairs relating to consumer protection was amended on the House floor to include provisions relating to aftermarket crash parts. The House adopted language which would have required the signature of a vehicle owner or the insured as part of the required disclosure under s. 501.33, F.S. This provision was adopted on second reading, however, it was removed on third reading. HB 1061 was subsequently passed into law and was silent as to aftermarket crash parts.

IV. Findings

A. The Debate

The debate in Florida relating to the use of OEM verse non-OEM crash parts closely mirrors the national debate which has taken place since the enactment of the Florida disclosure law a decade ago.

A recent article by "Consumer Reports"⁶ magazine addresses the use of aftermarket crash parts. This article has fueled the intensity of the debate surrounding the use of

⁶ "Cheap car parts can cost you a bundle", Consumer Reports, February, 1999, pages 12-19.

OEM versus non-OEM crash parts. The thrust of the article is to explore several issues in the debate and to describe the results of several tests on fenders and bumpers.

The article concludes by stating, "Until things change, car owners -- including used-car buyers who may inherit the inferior crash parts -- are being ill served [by the use of non-OEM parts]."⁷ Statements from the article have been widely cited in the debate and have evoked support and rebuttal from numerous sources.

The Certified Automotive Parts Association (CAPA)⁸ issued a press release dated January 28, 1999, as a rebuttal to the Consumer Reports article, challenging the accuracy and statements in the article. "Consumer Reports" responded to the response by letter dated February 8, 1999, and rebutted the rebuttal. "Consumer Reports" stated, "Our report stands as published." An additional response to the "Consumer Reports" response to the CAPA response was also circulated by letter from CAPA on March 1, 1999. These events highlight the intensity of the debate on replacement auto parts.

This report cites the "Consumer Reports" article and rebuttals, as well as, other sources as highlights of the issues surrounding the debate on the use of aftermarket crash parts. This national debate provides informative dialogue, however, the parameters of this report are designed to focus on the debate in Florida.

Since the Florida legislature passed the Aftermarket Crash Parts Act in 1989, the succeeding ten year debate in the Florida legislature regarding the use of aftermarket crash parts has focused on several issues. The first of these issues has been "what are aftermarket crash parts?"⁹ Other debate has centered on the questions of safety¹⁰,

⁷ Ibid, page 19.

⁸ CAPA is a non-profit organization which certifies aftermarket crash parts based on their established standards. See page 13 of this report for more on CAPA.

⁹ Discussion by the members of the Senate Committee on Agriculture and Consumer Services and questions by Senator W.D. Childers regarding SB 2106, April 6, 1999, 2:00 PM, room 301C.

¹⁰ Discussion initiated by Senator Jim Hargrett relating to SB 1930 at the committee meeting of the Senate Committee on Transportation, April 1, 1996, 2:00 pm, room C (LL-32).

warranties¹¹, cost¹², insurance coverage¹³, and quality.¹⁴ The current disclosure requirements of Florida law also continue to be debated as the disclosure requirements relate to aftermarket crash parts.¹⁵

B. Aftermarket Crash Parts - What are they?

The term “aftermarket crash part” is defined in s. 501.32(1), F.S., to mean “a replacement for any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels.” Variations of this definition exist in other states, but closely follow the National Association of Insurance Commissioners (NAIC) definition which is recommended in their “after market parts model regulation” and is distinctly similar to the definition in the Florida statutes. The most commonly cited examples of aftermarket crash parts include hoods, fenders, doors, and bumper components.

Aftermarket crash parts are often referred to as “soft parts” or “cosmetic parts” and are identified as the “skin of the vehicle”. The debate on the use of aftermarket crash parts or just crash parts is in contrast to the use of “hard parts” which are also referred to as “mechanical parts”. Various brand-name replacement parts are used to replace mechanical parts, such as batteries, filters, spark plugs, and shock absorbers, among many others. These are hard parts not crash parts. The use of the term “replacement part” may include both hard and soft parts, but the use of the term aftermarket crash parts refers only to soft parts.

Additionally, the reference to “collision repair” is contrasted with “mechanical repair”. Collision repair is the repair and replacement of exterior, soft parts of a vehicle. Collision repair may include the use of parts provided by the original manufacturer (OEM) or aftermarket crash parts (non-OEM) which are made by a manufacturer other

¹¹ Discussion regarding HB 2145 by Representative Debbie Wasserman Schultz and committee members at the meeting of the Consumer Services Subcommittee of the House Committee on Agriculture and Consumer Services, March 14, 1996, 10:00 am, room 317C.

¹² Discussion of HB 2145 by members of the House Committee on Agriculture and Consumer Services, March 27, 1996, 1:30 pm, room 317C.

¹³ Ibid.

¹⁴ Testimony by Senator Jim Horne regarding SB 2106 before the Senate Committee on Agriculture and Consumer Services, April 6, 1999, 2:00 pm, room 301C .

¹⁵ Statements by Representative Mark Ogles on the House floor regarding amendments to HB 1061, April 26, 1999.

than the original manufacturer of the vehicle. "Mechanical repair" is the repair and replacement of hard parts which may be either OEM or non-OEM hard parts.

"Rebuilt" vehicles are also not a part of the OEM versus non-OEM crash part debate. Sections 319.14 and 319.30, F.S., address rebuilt vehicles and provide, primarily, consumer and law enforcement protections for "vehicle titles" and identification of stolen vehicles. These provisions are not designed to address aftermarket crash parts.

The debate on the use of aftermarket crash parts also excludes the issues regarding "salvage parts" which are taken from "totaled vehicles."

The aftermarket crash part debate is generally divided into two issues. Parts manufactured by the original vehicle manufacturer (OEM) and parts manufactured by a manufacturer other than the original manufacturer (non-OEM). Non-OEM parts are further separated into the categories of CAPA certified non-OEM parts and non-OEM parts which are not CAPA certified.

CAPA is a non-profit organization established to develop and oversee a testing and inspection program for certifying parts used in collision repair. The program is designed to provide consumers and the vehicle repair industry "with an objective method for evaluating the quality of certified non-OEM parts and their functional equivalency to similar parts made by car companies [OEM]."¹⁶ CAPA was founded "to promote price and quality competition in the collision part industry, thereby reducing the cost of crash repairs to consumers without sacrificing quality."¹⁷

The CAPA procedure for certifying parts includes a review and inspection of the participating manufacturers' processes and factory. An independent testing laboratory evaluates the company to ensure that the ability exists for the manufacturer to produce parts that meet CAPA standards. If the factory is approved, individual parts are then tested for conformance to CAPA standards for being functionally equivalent to the OEM part. Upon approval, a CAPA "Quality Seal" may be applied to the parts. Parts are decertified if complaints are received or CAPA standards are not maintained.

Currently, OEM parts account for approximately 80 percent of collision repair parts sold. CAPA certified non-OEM parts consist of approximately 3 percent of the market. The remainder of the parts used consist of non-OEM parts which are not certified by CAPA, 12 percent, and salvage parts, 5 percent. Figures provided in committee debate suggest that these percentages have not varied significantly in the recent past.

¹⁶ "About CAPA", CAPA Web page at www.capacertified.com, July 27, 1999.

¹⁷ Ibid.

C. Safety Concerns

Currently, collision repair replacement parts, OEM and non-OEM, are NOT inspected by a government entity, either at the federal or state levels, prior to their use in the market. New vehicles must meet government standards prior to sale and are subject to recall for identified problems. The option for safety inspections after vehicles are sold new is, generally, left up to the states.

As a division of the U.S. Department of Transportation, the National Highway Traffic Safety Administration (NHTSA) is charged with the national responsibility of reducing deaths, injuries and economic losses resulting from motor vehicle crashes. This responsibility is carried out in part by creating safety standards for the manufacture of new motor vehicles, testing new vehicles and investigating safety defects identified in these vehicles. "Each year, automakers recall millions of vehicles for safety related problems. In fact, in 1995, a record 17.8 million cars and trucks were recalled for safety-related defects -- more cars were recalled than sold."¹⁸

Federal Motor Vehicle Safety Standards (FMVSS) do not directly apply to replacement parts with the possible exception of hoods. FMVSS 219 is a standard designed by the federal government to prevent the intrusion of vehicle parts, usually the hood, into the windshield of a motor vehicle or a protected zone in front of it.

The Insurance Institute for Highway Safety (IIHS)¹⁹ also tests new cars in addition to NHTSA. "In two separate advisories the IIHS published in 1987, it concluded that 'the cosmetic parts used to repair cars are irrelevant to safety' and that 'cars without any of these parts at all easily comply with the [frontal-]crash test requirements set' by the government. IIHS stands by its advisories today, saying the information is still 'accurate' and 'relevant'.²⁰

The story of the well publicized incident of a defective hood latch causing the hood to fly open and cover the windshield of a car driven by Daniel Della Rova²¹ has been retold many times during the debate on the safety aspects of replacement parts. The IIHS

¹⁸ Written testimony by Jack Gillis, Executive Director, CAPA, as presented to the Senate Committee on Agriculture and Consumer Services, March 23, 1999.

¹⁹ The Institute is a nonprofit, scientific and educational organization supported by automobile insurers. The charge of the Institute is to reduce motor vehicle crashes and the deaths, injuries and property damage accidents cause.

²⁰ "Are you entitled to brand-name repair parts? Know your OEM rights", article by Joe Frey, as published by the Insurance News Network, June 11, 1999.

²¹ Consumer Reports, page 12.

advisory noted above, states, "It's possible, but still not likely, that a replacement hood could compromise performance with respect to FMVSS 219. But even if this were to happen, it's not the cosmetic soft body part but the hinges and attachment systems that are most likely to be the critical areas of performance - and these attachments aren't among the cosmetic parts at issue."²²

Today's new vehicles are designed and constructed with passenger safety in mind. During testimony before the Florida Senate Committee on Agriculture and Consumer Services regarding safety, a representative of a major automobile manufacturer stated, "In today's world of uni-body vehicles, parts are specifically designed to interact in such a way as to protect the passenger cocoon."²³

To maintain passenger safety, many in the motor vehicle industry feel that only OEM parts should be used in collision repair. "To our knowledge, no testing has been conducted to verify that the performance of imitation crash parts in front-end crashes will be compatible with Ford air bag systems Because so little is known about the effect of imitation parts on an airbag system and component integrity, Ford believes genuine Ford crash parts should be used for collision repair to protect the interests of both collision repairers and vehicle owners."²⁴

Others in the industry testifying before the Florida Senate Committee on Agriculture and Consumer Services point out that, by definition, aftermarket crash parts are exterior, cosmetic, sheet metal and plastic which is the skin of the vehicle. They testify that safety is not jeopardized by using aftermarket crash parts.

The "Consumer Reports" article addresses safety by raising the question of whether there is "A hole in the safety net?". It reports, "Although NHTSA official Kenneth Weinstein agrees that there's 'clearly a potential for diminished safety' with imitation doors in a side impact, his agency's standards don't apply to replacement doors [OEM or non-OEM]. He adds that NHTSA hasn't been getting complaints about the safety of replacement parts. If it did, and if the complaints seemed 'reasonable', NHTSA would investigate."²⁵

²² "Cosmetic Replacement Parts and Auto Repair Practices", Insurance Institute For Highway Safety, Advisory Number 1, January, 1987, page 2.

²³ Testimony of Mr. George Gilbert, crash parts merchandising manager for Ford Motor Company's Customer Service Division, before the Florida Senate Committee on Agriculture and Consumer Services, April 6, 1999, 2:00, room 301C.

²⁴ "Imitation Crash Parts And Air Bag Systems", Ford News Position Statement, June 28, 1995.

²⁵ Consumer Reports, page 14.

David Snyder, the assistant general counsel for the American Insurance Association (AIA), is quoted in response to the "Consumer Reports" article, "Since fewer injuries and incidents of property damage mean lower claims costs, insurers' economic interests are in lockstep with safety. Insurers would get no benefit through saving a few hundred dollars on replacement parts if such parts contribute to a future accident that causes tens of thousands of dollars in medical and liability losses."²⁶

The "Consumer Reports" article further notes, "While there is little data on the safety of replacement parts, there is enough anecdotal evidence to raise concern." "Consumer Reports" states that they believe bumpers, doors and hoods should be "scrutinized."

Programs addressing safety aspects of the operation of motor vehicles are generally left up to the states. Florida no longer has a statewide vehicle safety inspection program.²⁷ Universally, safety inspection programs have focused on mechanical, hard parts of a vehicle and not replacement crash parts, either OEM or non-OEM. The former statewide safety inspection program in Florida also did not perform OEM or non-OEM crash part safety inspections, but focused on mechanical parts.

Locally, some jurisdictions in Florida are authorized to provide variations on limited inspection programs. Section 325.001, F.S., provides, "...any county which chooses to have a periodic motor vehicle inspection program may establish one." Currently, only Dade county operates a limited inspection program for passenger vehicles for hire. No other counties are operating a vehicle safety inspection program, however, six counties currently conduct annual motor vehicle emissions inspections.²⁸

Voluntary safety inspection programs were terminated in 1997 when the Legislature repealed s. 325.205, F.S. This statute had required that free, voluntary safety inspections be provided at all central emissions inspection stations.²⁹

Many programs, voluntary and government mandated or sanctioned, address safety consciousness. According to a position statement issued by General Motors, "Testing

²⁶ "Insurers, Auto-Parts Group Attack Magazine Article", Best's News,, February 2, 1999.

²⁷ Part II of chapter 325, F.S., was repealed in 1981 by HB 101, chapter 81-212, Laws of Florida, effective October 1, 1981.

²⁸ In 1988, the Legislature enacted the Clean Outdoor Air Law, creating the Motor Vehicle Inspection Program, ss. 325.201 - 325.219, F.S., to require annual motor vehicle emissions inspections in certain areas of the state. DHSMV currently administers emissions inspections in six Florida counties - Broward, Dade, Duval, Hillsborough, Pinellas, and Palm Beach.

²⁹ Pursuant to SB 1002 by the Senate Committee on Transportation and Senator Hargrett, chapter 97-300, LOF, this policy change took effect October 1, 1997.

done to assure compliance with Federal Motor Vehicle Safety Standards, as well as, GM's own internal guidelines confirm that the proper design and assembly specifications are in place prior to allowing vehicle sales."³⁰ This reference is to new vehicle sales.

The GM position statement further provides, "Any deviation in the use of parts not specifically designed and tested to meet the original specifications [i.e. non-OEM aftermarket crash parts] can compromise the integral balance between these safety systems. Also, those parts are not covered by GM's new vehicle warranties and may void those warranties on any GM adjoining parts or systems that fail as a result of the use of non-genuine GM parts."³¹

D. Warranty Provisions

According to Webster's dictionary, ninth edition, a warranty is commonly known as a promise or guarantee of "the integrity of a product and of the maker's responsibility for the repair or replacement of defective parts." The debate in Florida on the application of warranties to OEM and non-OEM crash parts has been lengthy and confusing. The debate has addressed the question of whether the use of non-OEM parts would affect the warranty on the entire vehicle.

"The use of non-OEM parts generally does not violate or invalidate the original manufacturer's warranty."³² Federal law, the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, et seq., provides at 15 U.S.C. 2302:

(c) Prohibition on conditions for written or implied warranty: waiver by [Federal Trade] Commission

No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the [Federal Trade] Commission if --

³⁰ "General Motors Position on the Critical Requirements of the Structural Components, Especially Sheet Metal and Glass, on the Vehicle Structural Integrity and Protection", General Motors position statement, August 13, 1997.

³¹ Ibid.

³² Bill analysis of HB 1663 by the House Committee on Insurance, March 23, 1999, page 2.

(1) the warrantor satisfies the [Federal Trade] Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) the [Federal Trade]Commission finds that such a waiver is in the public interest.

Rules of the Federal Trade Commission further provide:

No warrantor may condition the continued validity of a warranty on the use of only authorized repair service and/or authorized replacement parts for non-warranty service and maintenance. For example, provisions such as ... "all replacement parts must be genuine 'ABC' parts," and the like, are prohibited where the service or parts are not covered by the warranty. The provisions violate the Act in two ways. First, they violate section 102(c) ban against tying arrangements. Second, such provisions are deceptive under section 110 of the Act, because the warrantor cannot, as a matter of law, avoid liability under a written warranty where a defect is unrelated to the use by the consumer of 'unauthorized' article or services.³³

The State of Florida does not regulate motor vehicle replacement part warranties that are issued to cover crash part repairs. Chapter 634, F.S., provides that warranty associations be regulated by the Florida Department of Insurance (DOI). This chapter is divided into three parts: Part I, Motor Vehicle Service Agreement Companies; Part II, Home Warranty Associations; and Part III, Service Warranty Associations. By definition these regulatory provisions do not apply to non-OEM warranted parts or OEM warranted parts.

The "Florida Deceptive and Unfair Trade Practices Act", part II of chapter 501, s. 501.201 - 501.213, F.S., may apply to motor vehicle warranties if a consumer was defrauded under certain circumstances. These provisions do not apply directly to non-OEM parts or OEM parts.

The State of Florida may be drawn into the warranty protection arena through the Florida "Lemon Law", chapter 681, F.S. The provisions of this act are carried out by the Office of the Attorney General and the Department of Legal Affairs. In summarizing the act, the Attorney General states, "Recognizing that 'new' doesn't always translate into 'problem-free', the Florida Legislature in 1988 revised a law that makes car manufacturers responsible -- under certain circumstances -- for replacing defective vehicles or refunding consumers' money." These provisions are commonly known as Florida's automobile "Lemon Law."

³³ 16 C.F.R. Part 700, sec. 700.10

The General further states, "It covers manufacturing defects or nonconformity which substantially impair the vehicle's use, safety or value." The act applies to new vehicles not the repair of vehicles using replacement parts for collision repair.

Testimony before the Florida House Committee on Agriculture and Consumer Services further clarifies the application of warranties offered by manufacturers in relation to replacement parts. If a fender, for example, is replaced with an aftermarket crash part, the question of the warranty is on that crash part only. The use of the crash part will not void the warranty on the whole vehicle. If that aftermarket crash part were to "bleed" [which means to rust or corrode and cause rusting or corrosion on an adjoining part] and it bleeds into the hood, for example, then the warranty has been voided on the adjoining part, the hood in this instance. The warranty on the remainder of the vehicle is not affected.³⁴

Typical of any contract, the actual language of the warranty agreement has to be looked at for determination of what is specifically being warranted under what circumstances. Warranties for non-OEM parts vary based on the warrantor. A major insurer in the state "promises that you will be satisfied with the fit and corrosion qualities of the outer plastic and sheet metal parts for as long as you own your vehicle."³⁵ The insurer further warrants that they "promise that you will be satisfied with the performance of all other [replacement parts] for at least as long as the original equipment manufacturer would have warranted its new replacement part."³⁶

Another insurer in Florida "will warrant a replacement motor vehicle part for the remainder of the vehicle warranty or for one year from the date of the repair, whichever is greater."³⁷

A major distributor in the state warrants, "replacement parts are free of defects in material and workmanship and meet or exceed the generally accepted industry

³⁴ Oral testimony regarding HB 2145 by a representative of the American Automobile Manufacturers Association before the House Committee on Agriculture and Consumer Services, March 14, 1996, 10:00 am, room 317C.

³⁵ "Quality Replacement Parts, State Farm's Promise to You", warranty agreement, State Farm Insurance Companies, Bloomington, Illinois.

³⁶ Ibid.

³⁷ Bill analysis by the House Committee on Insurance, HB 1663 by Rep. Bitner, March 23, 1999, page 2.

standards and specifications for replacement parts.³⁸ The warranty is effective as long as the original purchaser owns the vehicle.

Parts are warranted, as a practical matter, all the way through the distribution channel from the manufacturer through the body shop, including the distributor and the insurer. The cost of complying with a warranty arrangement is often a negotiated business practice based on arrangements between a repair shop, the insurer and the distributor or manufacturer of the product. Should a distributor receive a defective part from a manufacturer as a part of a bulk purchase and should the part be returned to the distributor as being defective by a repair shop, the distributor will often absorb this singular loss as the "cost of doing business."

E. Cost Factors

Participants in the debate on aftermarket crash parts, generally, concede the cost of aftermarket crash parts is less than the cost of OEM crash parts. Non-OEM parts can cost anywhere from 20 to 65 percent less than OEM parts because they are not name-brand parts.³⁹ "Henry Ford is reputed to have said he'd give his cars away if he could have a monopoly selling replacement parts..."⁴⁰

The competitive use of non-OEM collision replacement parts is a relatively recent occurrence within the vehicle repair industry. "Until about 20 years ago, auto manufacturers had a monopoly on the production and sale of auto repair parts, with profitability as high as 800 percent... Consumers had no choice other than to pay high prices for parts. In the early 1980's, when independent manufacturers began making and selling cosmetic sheet metal auto replacement parts, they priced their parts at 20 percent to 50 percent less than costs charged by auto manufacturers."⁴¹

Motor vehicle industry observers point out that the price competition initiated by the introduction of aftermarket crash parts has brought down prices for OEM and non-OEM collision replacement parts. "The availability of competitively priced parts or replacement crash parts is, in fact, a benefit to the collision repair industry.

³⁸ "Crash Replacement Warranty", Inteuro Parts Distributors, Inc., Medley, Florida.

³⁹ Bill analysis by the House Committee on Insurance, HB 1663 by Rep. Bitner, March 23, 1999, page 2.

⁴⁰ Consumer Reports, page 16.

⁴¹ News article, "NAIA: Urges Competition in Auto Parts Debate", as printed by The Underwriters' Wire Report, July 19, 1999, and quoting Robert Hurns, associate counsel for the National Association of Independent Insurers while participating in a panel discussion at the summer meeting of the National Conference of Insurance Legislators.

Independent shops benefit from having the opportunity to buy lower priced parts if customers elect to purchase these parts. The competition in sheet metal parts that was introduced in the early 1980's has resulted in lower prices for consumers..."⁴² Mr. Robert Hurns of NAIA is also quoted as saying, "Since then [the 1980's], competitive parts have brought down prices for all parts."⁴³

The Alliance of American Insurers (AAI) periodically calculates the cost of constructing a vehicle by using OEM replacement parts. For a 1998 Ford Explorer XLT, AAI states, the sum of the parts is nearly three times its original retail price or a difference from \$27,145 at retail, to \$77,000 after being rebuilt with OEM replacement parts.⁴⁴

The "Consumer Reports" article also addresses the cost of the use of OEM parts and refers to the AAI calculations, "That's high -- but that's not the whole story. It costs more to package, inventory, ship, and sell individual parts. Automakers also must stock every replacement part, while aftermarket makers cherry-pick the most profitable ones. Keystone Automotive Industries, the largest U.S. aftermarket parts distributor, says its warehouses stock 15,000 to 19,000 different crash-part numbers. Ford inventories more than 35,000 crash-part numbers, plus 245,000 other Ford Parts."⁴⁵

The "Consumer Reports" article is titled, "Cheap car parts can cost you a bundle" with one theme of the article being that car owners are ill served by high priced factory body parts and less-expensive parts that are of questionable quality which could cost the consumer more in the long run.⁴⁶

The rebuttal to the "Consumer Reports" article by Jack Gillis of CAPA argues, "The only way non-car company [non-OEM] parts could cost consumers any more than car company parts would be because they increased repair costs in subsequent accidents or prematurely failed. (They certainly don't increase the cost of the initial repair, they reduce it.) If, in fact, non-car company parts increased repair costs, it would be an

⁴² Undated memorandum by ASA, as provided by Maury Management Group, June 10, 1999, and available in the files of the House Committee on Business Regulation and Consumer Affairs, page 1.

⁴³ "NAIA: Urges Competition in Auto Parts Debate", news article, as printed by The Underwriters' Wire Report, July 19, 1999, and quoting Robert Hurns, associate counsel for the National Association of Independent Insurers while participating in a panel discussion at the summer meeting of the National Conference of Insurance Legislators.

⁴⁴ "High Cost of OEM Parts Still Problematic, But Competition Starting to Have an Effect, Alliance Says", press release from Alliance of American Insurers, August 26, 1998, page 1.

⁴⁵ Consumer Reports, page 16.

⁴⁶ Ibid, page 19.

expense born by the insurance companies. If this increased cost were real, it would be highly illogical and very uneconomical for insurance companies to use them. Regarding premature failure, again it would be the guarantees of the insurance industry that would be suffering. As "Consumer Reports" knows, there are very few (if any) claims against insurance companies for premature failure of these parts. If there were, however, this would be a cost born by the insurance company, not the consumer."⁴⁷

F. Insurance Coverage

During the debate of aftermarket crash parts in the House Committee on Agriculture and Consumer Services, the question was posed that if aftermarket crash parts were not used by an insurer, how long would it take for the consumer's premiums to go up in cost? The respondent representing testimony of a major insurer stated, "I can't tell you exactly when it will happen. I can guarantee to you that it will happen."⁴⁸

The "Consumer Reports" article states, "Many of the insurers maintain that imitation parts keep premiums down, but none provided hard data to prove it."⁴⁹ One of the key findings published in the "Consumer Reports" article states, "Most auto insurers endorse imitation parts because they can be 20 percent to 65 percent less expensive than OEM. But the companies we surveyed provided no evidence that those savings are being passed on to policyholders."⁵⁰

The article further states, "Buying imitation parts simply diverts money from the pockets of one big industry -- automobile manufacturing -- to the pockets of another big industry -- auto insurance. The insurers won't earn their wings until they demonstrate that a fair share of the money they save ends up in the pockets of consumers."⁵¹

Automobile insurers in Florida are regulated by the Department of Insurance (DOI) pursuant to various Florida statutes located within the Florida Insurance Code, chapters 624 through 632, 634, 635, 637, 638, 641, 642, 648, and 651. Self-insurers, generally, are not regulated by the State of Florida.

⁴⁷ Letter in rebuttal of the "Consumer Reports" article of February, 1999, dated March 1, 1999 from Jack Gillis, Executive Director of CAPA to Rhoda H. Karpatkin, President, Consumers Union, page 9.

⁴⁸ Testimony before the House Committee on Agriculture and Consumer Services regarding HB 2145, March 21, 1996, 9:00 am, room 317C.

⁴⁹ Consumer Reports, page 19.

⁵⁰ Ibid, page 14.

⁵¹ Ibid, page 19.

One large self-insurer is the State of Florida. Self-insurance is provided for the fleet of vehicles which the state owns, as well as, coverage for vehicles which are leased. The state does not have a written repair policy relating to the use of aftermarket crash parts for state owned and operated vehicles. Based on low bid guidelines, the various state agencies are authorized to adopt their own policies and procedures in relation to collision repair. The state's budgeting process does not require disclosure by the agencies of their collision repair experience for purposes of funding the individual agency repair programs.

In relation to individual state agencies, statistics are not routinely maintained for purposes of analyzing costs of collision repair. One agency surveyed provided informal data indicating three out of four most recent repairs, not an average but actual repair, included aftermarket crash parts.⁵²

For insurers that are not self-insured, section 627.0651, F.S., is the insurers rating law and authorizes the Florida Insurance Commissioner to regulate motor vehicle insurance rates as a means of protecting insured consumers. The rating law allows DOI to determine whether rates are excessive, inadequate or unfairly discriminatory. Rates are deemed excessive if they are likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved in the class of business or if expenses are unreasonably high in relation to services rendered.⁵³

Additional provisions of the insurance code address excess profits. The excess profits law is designed to authorize the department to require the refund of excess profits earned by insurers over a three year period. Auto insurers must annually file data with the department in order to determine whether excess profits have been realized.⁵⁴

Though the rating law and the excess profits law require a significant amount of information to be provided to the department, specific cost analysis data for the use of OEM versus non-OEM crash parts is not required and is not specifically reported to the department except as data included within broader reporting categories. Data filed with the department does not lend itself to analysis of insurance rate filings for purposes of determining the cost impact of the use of OEM versus non-OEM crash parts.

⁵² Informal report regarding agency motor vehicle repair experience and procedures provided by the Office of Legislative Affairs, Department of Business and Professional Regulation, August 29, 1999.

⁵³ Section 627.0651(3), F.S., 1998 Supplement.

⁵⁴ Section 627.066, F.S.

Motor vehicle insurance coverage in Florida is competitive when compared to other states in average expenditures and premiums with rates declining in 1997 and 1998.⁵⁵ Profits earned by Florida motor vehicle insurers are comparable to insurers nationwide.⁵⁶ Additionally, insurers have not realized any excess profits pursuant to the Florida "excess profits" law.⁵⁷

Motor vehicle insurance policies contain provisions which provide guidelines and responsibilities for the repair of a damaged vehicle. A typical policy addresses the guidelines for the repair process and the responsibilities of the insurer for payment of relevant costs. Though coverages vary, the consumer agrees to the terms of the insurance contract when the policy is signed by the consumer as the new insured. This agreement includes repair procedures under a motor vehicle policy. A typical policy includes language such as, "We will include in the estimate parts sufficient to restore the vehicle to its pre-loss condition. You agree with us that such parts may include either parts furnished by the vehicle's manufacturer or parts from other sources including non-original equipment manufacturers."

With the large number of insurers writing automobile insurance coverage in Florida, variations in coverage and cost can be expected. One such policy includes an arrangement between a major insurer and an automobile manufacturer to provide discounted insurance coverages. The insurance includes several coverages rolled into one policy which is offered at a reduced premium price. This discount includes the use of OEM parts. VOLVO VALUE INSURANCE, offered by Liberty Mutual, provides that for genuine Volvo parts, "When repairs are needed, Volvo Value Insurance coverage authorizes the use of Genuine Volvo Parts -- parts designed and manufactured to Volvo's exacting specifications to help maintain your Volvo's value and performance." This value package seems to suggest, to a Volvo owner at least, that collision repair will be assured and insured to be nothing but the highest quality.

G. Quality

What is the quality of aftermarket crash parts? The answer is unclear. Different tests have yielded different results. Different repair shops have different experiences. Different insurers insure and warrant parts differently. Different manufacturers have different opinions.

⁵⁵ "Potential Impact Of Mandating Bodily Injury Liability Insurance For Motor Vehicles", Interim report number 98-03 by the Senate Committee on Banking and Insurance, November, 1998, page 55.

⁵⁶ Ibid.

⁵⁷ Ibid.

Rules of DOI are an extensive set of administrative law and address numerous aspects of the insurance code. DOI rule 4-166.027, Florida Administrative Code, "Standards for Prompt, Fair and Equitable Settlements Applicable to Automobile Insurance", applies to the adjustment and settlement of both personal and commercial automobile insurance claims. Subsection (7) of the rule provides, "Every insurer ... shall cause the damaged vehicle to be restored to its physical condition prior to the loss at no additional cost to the claimant other than as stated in the policy."

Subsection (10) of the rule states, "No insurer shall require the use of replacement parts in the repair of an automobile unless the parts are at least equal in kind and quality to the original parts in terms of fit, quality, and performance." The phrases "restored to its physical condition prior to the loss", "equal in kind and quality", and LKQ (an industry acronym, which stands for "like kind and quality"), are widely used in the motor vehicle repair and automobile insurance industries. The debate relating to "quality", as it relates to the use of aftermarket crash parts, centers on the use of these phrases and terms which are generally interchangeable. Though widely used, these terms are not clearly defined.

Major domestic manufacturers include: General Motors producing Buick, Cadillac, Chevrolet/Geo, GMC, Oldsmobile, Pontiac and Saturn; Ford Motor Company producing Ford, Lincoln, and Mercury; and Chrysler producing Chrysler, Dodge, Eagle, Jeep, and Plymouth.

Major Asian manufacturers include: Honda producing Acura and Honda; Nissan producing Infiniti and Nissan; Toyota producing Lexus and Toyota; and others producing Daihatsu, Hyundai, Isuzu, Mazda, Mitsubishi, Subaru, and Suzuki.

Major European manufacturers include Volkswagen producing Audi and Volkswagen and others producing BMW, Jaguar, Mercedes-Benz, Porsche, Saab, and Volvo.

These major automobile manufacturers produce OEM replacement parts for their vehicles. They may also, as a common practice, contract out for other manufacturers to produce their OEM parts according to their specifications.

Non-OEM part manufacturers are also located worldwide. Production facilities exist in the United States, but are located primarily overseas. CAPA lists its certified parts, in addition to, manufacturers that produce the parts that CAPA certifies. These manufacturers total 24 as of November 1, 1998.⁵⁸ This number of companies is an

⁵⁸ CAPA Certified Parts, as printed from the CAPA Web site, www.capacertified.com, July, 1999. Listing current as of November 1, 1998.

indication of the variety of vehicle and part producers that exist in the automotive industry.

The intensity of the discussions within the motor vehicle repair industry regarding the use of OEM versus non-OEM parts is often technical and contentious. A dialogue of opinions can be found on the autobody web site. Though primarily oriented to technical debate among auto body shop experts, the various exchanges provide insight into the day to day experiences of body shop owners and technicians.⁵⁹

One prominent body shop owner operating since 1938 points out the frustrations and costs which may occur when non-OEM parts have to be returned to the distributor or reworked and retooled to achieve an acceptable appearance for the customer. He notes that not all aftermarket crash parts are bad or ill-fitting, but they are like a box of chocolates, you never know what you are going to get.⁶⁰

Opponents of the use of non-OEM parts cite a Ford comparison test conducted in 1994 of OEM (Ford) parts, CAPA certified parts, and non-CAPA certified parts. The conclusions state that it is obvious CAPA and non-CAPA parts are neither of "like kind and quality" nor "functionally equivalent."⁶¹ Proponents point out that the Ford test results were not interpreted correctly and, in fact, the project manager has testified under oath that "CAPA parts often out perform Ford parts."⁶²

As one of the magazine's key findings, "Consumer Reports" states, "The imitation bumper and fenders we tested were inferior to OEM parts. The bumpers fit badly ... Most of the fenders also fit worse than OEM fenders..."⁶³ Rebuttal to the "Consumer Reports" tests point out that only 18 selected parts were used out of a universe of 610 million parts of just CAPA certifiable parts used in the last ten years. Therefore, the "Consumer Reports" test is not representative of the quality of the non-OEM market.⁶⁴

⁵⁹ See www.autobodyonline.com and "consumer discussion/answer forum".

⁶⁰ Sight visit to Sheffield Auto and Truck body shop, Tallahassee, Florida, July 19, 1999, and interview with Elmer Sheffield, Charlie Elder and shop employees.

⁶¹ "A Comparative Study on Ford OE Versus After-Market Crash Parts", Ford Motor Company Summary Report, November, 1994, page 8.

⁶² Letter dated March 1, 1999 from Jack Gillis, Executive Director of CAPA to Rhoda H. Karpatkin, President, Consumers Union, in rebuttal of the "CONSUMER REPORTS" article of February, 1999, page 5.

⁶³ Consumer Reports, page 14.

⁶⁴ "Errors, Unsubstantiated Claims and Missing Facts Provide an Inaccurate Review of an Important Issue", press release from CAPA in rebuttal of the "Consumer Reports" article of February,

Opponents cite the parts demonstration conducted by Collision Industry Conference (CIC) in November, 1998. A CAPA certified part fared poorly and the part was decertified on the spot. Proponents cite the parts demonstration conducted by CIC in January, 1999, where a Ford OEM part fared poorly and the part is being analyzed by company engineers and quality control experts to fix the problem.⁶⁵

Opponents point to the hood release problem on the car of Daniel Della Rova, noted in the "Consumer Reports" article and other publications. Proponents cite recall figures on OEM hoods and report that based on the U.S. Department of Transportation recall actions, from 1987-1997 there were "2,659,084 OEM hood recalls."⁶⁶

The use of non-OEM parts, opponents argue, reduce the value of the repaired vehicle and cite surveys which reflect opinions that the resale value of vehicles equipped with OEM parts is greater than the resale value of vehicles equipped with aftermarket crash parts. They state that the reduction in value is attributed to the perception that vehicles that have been repaired using non-OEM parts do not achieve the standards of vehicles repaired with OEM parts. Proponents argue that any vehicle which has been identified as being in a crash and has been repaired will naturally be devalued in the eyes of a subsequent purchaser but the reason is because the vehicle was in an accident not because of the use of non-OEM parts in its repair.

Opponents argue that non-OEM parts are not the same as OEM parts in terms of fit, finish, and corrosion resistance. Proponents argue that certified parts are within acceptable variation ranges of the original parts and non-OEM parts are functionally equivalent to OEM parts and are of like kind and quality.

Opponents cite a class action lawsuit in Illinois as an indication that non-OEM parts are not of like kind and quality to OEM parts.⁶⁷ At issue in the Illinois lawsuit, is the contractual language of State Farm insurance policies which specify the use of non-OEM replacement parts, referred to as "quality replacement parts" in their policies. Their policies provide for the use of these parts when the parts are available and when they are priced lower than OEM parts. The plaintiffs contend that non-OEM parts are neither of like kind and quality, nor are they sufficient to restore a policyholder's vehicle

1999, page 1.

⁶⁵ "CAPA Parts Pass CIC Fit Test", Automotive Body Repair News ABRN, March, 1999.

⁶⁶ "Report on OEM Hood Failures", Based on Data from the National Highway Traffic Safety Administration, U.S. Department of Transportation, as compiled by CAPA, page 1, undated.

⁶⁷ Circuit Court for the First Judicial Circuit, Williamson County, Illinois, Tammy Snider and Michael Avery, On Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. State Farm Mutual Automobile Insurance Company, Defendant, No. 97-L-114.

to its pre-loss condition. Therefore, the plaintiffs contend, State Farm has breached its contract with its policyholders.

State Farm denies any wrongdoing and contends that non-OEM parts are of like kind and quality to OEM crash parts and they fully restore a policyholder's vehicle to its pre-loss condition. State Farm also contends that its policyholders are informed whenever non-OEM crash parts are used, and that its use of the term "quality replacement parts" is not misleading.

In Florida, the Miami Herald reported that a law firm has filed lawsuits in Broward County against three insurance companies: Allstate, Metropolitan Casualty, and Progressive. The suits are seeking an injunction against the insurers to prohibit them from using aftermarket crash parts in repairs. They also are seeking monetary damages for the plaintiffs.⁶⁸ It is reported that the plaintiffs' attorneys will seek class action status for the suits. Copies of the lawsuits were not available at the time of this writing.

The impact of these and other lawsuits on the debate relating to the use of aftermarket crash parts is unknown. There is some sentiment that these actions will clearly define the issues. Others feel the courts will not put a dent in the debate. "Litigiousness is a real problem in this country. All the safety improvements in the world won't change the country's view toward litigation."⁶⁹

A significant part of the debate on collision repair stems from the fact that so many consumers have had a repair experience with one or more of their vehicles within their lifetime. Nearly everyone appears to have a story to tell. Most of these experiences and problems are resolved through the channels that are available from either body shops, insurers, distributors, manufacturers or governmental agencies or a combination of them.

The Florida Department of Agriculture and Consumer Services (DACS), through its Division of Consumer Services (division), is the clearinghouse for consumer complaints for the state, as well as, the administrator of programs which regulate various business activities, such as motor vehicle repair shops. The stated purpose of the divisions' consumer protection program is, "to protect Florida's consumers from deceptive and

⁶⁸ "Insurers sued over car parts", Miami Herald, August 21, 1999.

⁶⁹ "Auto Cost Cuts Nearing Dead End", The National Underwriter Company, 1999.

unfair business and trade practices and from unsafe, harmful, and inferior products and services.”⁷⁰

Historically, consumer complaints regarding motor vehicles have been one of the largest subject complaint categories which DACS receives on an annual basis. Though complaints are categorized for ready reference, the division’s database is not programmed in a fashion which readily identifies OEM versus non-OEM crash part complaints. Complaint data are categorized under various codes which are recorded by division staff based on the type of complaint received. For instance, for motor vehicle repair, category “906 - Parts” may include mechanical parts, tires, mirrors or crash parts, among others. Category “941 - Body Work” could include paint, trim, crash parts etc. As a result, no concrete data are available regarding the use and problems with the use of non-OEM or OEM parts. Staff of the division has indicated that few if any complaints are processed annually which they would identify as relating to aftermarket crash parts.

Similar to DACS, the Division of Insurance Consumer Services of the Department of Insurance records complaints which they receive and process. There may be instances where inquiries are forwarded from DOI to DACS for processing when they are not insurance related. DOI complaint data are also categorized based on the information received and recorded by its complaint analysts. Inquiries relating to crash parts would only be identified if the initial information recorded included an appropriate identifying reference. DOI motor vehicle collision repair data is compiled within the category of “Quality of Repair”. By reviewing complaints opened within the two-year period from July 1997 through July 1999, 22 complaints appear to address aftermarket crash parts.

When the “quality” debate may be resolved is anyone’s guess or opinion. Numerous initiatives in the collision repair industry are underway to provide educational forums for the industry and consumers. Periodic demonstrations by the Collision Industry Conference (CIC) regarding crash parts have been one of these initiatives. The results of the demonstrations are often in the eyes of the beholder. “The non-OEM parts saga got some floor time at CIC, and will continue to do so, with attendees voting to continue the non-OE[M] versus OE[M] parts fit demonstrations. While many have questions concerning the validity of these tests, they have served a useful purpose by focusing attention on the daily problems repairers experience with both non-OE[M] and OE[M] parts.”⁷¹

⁷⁰ “Performance Based Program Budgeting Approved Measures, Consumer Protection”, Department of Agriculture and Consumer Services PB² budget supporting documents for fiscal year 1999, Executive Office of the Governor, page 1.

⁷¹ “Sorry, Just a Little More on the Non-OE Parts Fiasco”, editorial comments, Collision Repair Industry INSIGHT, May, 1999,

Others feel solutions can be achieved through cooperation and continuing dialogue. "OEMs, the insurance industry, competitive manufacturers, repair professionals and distributors have evidenced a desire to sit down at the same table and explore common ground."⁷² "Hopefully, this will lead to a market-based solution to the issue, as opposed to revisiting the issue year after year in the state legislatures where so much time and effort is expended."⁷³

There is disagreement over the quality of aftermarket crash parts. "We [manufacturers] do not believe that like kind and quality are the same as original equipment. So that is the general dispute that goes on. It will probably go on until the end of time."⁷⁴

Though the debate on "quality" may go on until the end of time, the quality debate appears to center on consumer disclosure remedies for the use of aftermarket crash parts.

H. Disclosure

Currently, there is no federal law which directly references the use of non-OEM crash parts. Among the states, the issue has been addressed with requirements for disclosure being the most prevalent form of consumer protection. Florida's disclosure law is closely tailored after the National Association of Insurance Commissioners (NAIC) model legislation.

Section 559.905, F.S., specifies the conditions for a motor vehicle repair shop to provide a written estimate for repairs of a motor vehicle. These provisions require certain information be provided within the estimate, as well as, specific disclosure language regarding the estimate.

When a written estimate is required to be provided by a repair shop or by an insurer or both of them and the repairs are to include the use of non-OEM parts, s. 501.33, F.S., requires that the estimate include the disclosure language of the Aftermarket Crash Parts Act.

⁷² "NAIA: Urges Competition in Auto Parts Debate", The Underwriters' Wire Report, July 19, 1999, quoting Robert Hurns, associate counsel for the NAIA (National Association of Independent Insurers) and citing a recent meeting of NAIA members, CAPA, an OEM group, and competitive parts manufacturers.

⁷³ Ibid.

⁷⁴ Oral testimony by a representative of the American Automobile Manufacturers Association before the House Consumer Affairs subcommittee of the House Committee on Agriculture and Consumer Affairs regarding HB 2145, March 14, 1996, 10:00 am, room 317C.

Depending on the interpretation of the application of regulatory language, 36 to 39 states address the use of aftermarket crash parts by requiring disclosure to the consumer regarding the use of these parts.⁷⁵ The vast majority of the states' disclosure statements closely resemble the model NAIC disclosure language.

Michigan statutory law, for example, requires a disclosure, "if an insurer requests the use of non-OEM aftermarket crash parts..." An installer or repair facility may use the parts if the estimate states, "This estimate has been prepared based on the use of aftermarket crash parts supplied by a source other than the manufacturer of your motor vehicle. Warranties that apply to these replacement parts are provided by the manufacturer, distributor, or insurer of these parts."⁷⁶

Additionally, several states require consent, in addition to disclosure, on the part of the consumer prior to the use of aftermarket crash parts.⁷⁷ The state of Oregon, in addition to being the first state to enact regulations beginning in 1986, requires disclosure and consent. Regulations in the state of Wyoming also require disclosure, as well as, consent. They provide, "No insurer shall directly or indirectly require the use of non-OEM aftermarket parts in the repair of an automobile nor shall any insurer accept any estimate or authorize any repair of an automobile unless the consumer is advised that he or she is not required to accept non-OEM aftermarket parts in the repair of the vehicle and consents in writing to the use of those parts before repairs are made."⁷⁸

The fiscal comments from the bill analysis on the initial disclosure statute in Florida states, in part, "Providing disclosure as to the use of non-original manufacturer crash parts may encourage quality control in the manufacture of all replacement crash parts so as to enhance competition among manufacturers regarding cost and quality."⁷⁹

⁷⁵ In addition to independent research by staff, state laws analysis was also based on data reported by ASA (Automotive Service Association) and AAI (Alliance of American Insurers).

⁷⁶ Michigan Laws, section 257.1363, the "[Michigan] aftermarket crash parts act."

⁷⁷ Arkansas, Indiana, Oregon, Rhode Island, West Virginia, and Wyoming.

⁷⁸ Wyoming Department of Insurance Regulations, chapter 19, ss. 6.

⁷⁹ Final bill analysis of CS/SB 1414, House Committee on Commerce, June 14, 1989, page 3.

V. Conclusions

“Consumer Reports” concludes their article on replacement crash parts by making recommendations for protecting consumers:

- * Congress should direct the National Highway Traffic Safety Administration to establish safety standards for replacement parts and to require labeling so problem parts can be traced for recalls and liability;
- * Congress should authorize the Federal Trade Commission to require collision-repair shops to disclose the use of imitation body parts clearly to consumers and secure consent; and
- * State legislatures or insurance commissioners should require auto insurers to disclose how much money they are saving from the use of imitation parts.⁸⁰

Based on the findings of this report, it is concluded that the debate on the use of OEM versus non-OEM crash parts has been lengthy and intense. The issues in this debate have been addressed in the national theater, as well as, among the states. The national debate continues and it appears no clear resolution to the issues has been identified to date. The prevalent policy at the national level is to provide a safety assurance network for new motor vehicles, primarily, through the National Highway Traffic Safety Administration. Safety programs relating to used motor vehicles and collision repair is generally left to the states.

Currently, Florida does not conduct a safety inspection program for motor vehicles or collision repair. One county in Florida does maintain a limited safety inspection requirement for certain for hire vehicles.

It is further concluded that the issues which have been debated in Florida closely mirror the national debate with no clear resolution to the issues having been identified. Florida law appears to be consistent with prevailing consumer protections relating to motor vehicle repair pursuant to the “Florida Motor Vehicle Repair Act”, the “Aftermarket Crash Parts Act”, and the “Florida Insurance Code”, among others. Florida’s aftermarket crash part disclosure statute is based on model legislation recommended by the National Association of Insurance Commissioners which has been adopted in the majority of the states.

⁸⁰ Consumer Reports, page 19.

VI. Policy Options

Policy options exist based on the recognition or perception of problems and alternatives which may be identified. Modifications to the current provisions of the Florida Statutes relating to aftermarket crash parts have been debated, however, none have been adopted to date. There is sentiment that the language of the current statutes is adequate and provides satisfactory consumer protections. Others feel that changes to the current disclosure laws could further protect and benefit consumers. Based on the findings of this report, several options are identified below:

A. Aftermarket crash parts

1. The current definition of “aftermarket crash parts” appears to be consistent with model legislation and definitions used in other states. It appears to be an industry accepted definition which serves the purposes for which the definition is designed without significant confusion.
2. The definition of “motor vehicle” could be included in the provisions of the “Aftermarket Crash Parts Act” for purposes of clarifying the application of the disclosure provisions to the repair of motor vehicles while excluding certain vehicles such as construction equipment or golf carts.

B. Safety

1. If it is determined that safety is compromised by the use of aftermarket crash parts, consideration could be given to creating a statewide safety inspection program. Such a program could be modeled after the former statewide safety inspection program, but tailored to apply to aftermarket crash parts which are installed as a result of collision repair.
2. The current registration procedure for motor vehicle repair shops could be modified to provide for certification of body shops as state inspection facilities. Additionally, motor vehicle repair technicians could be certified as state inspectors at certified repair facilities. A program of education and training of personnel as official state inspectors could be implemented.
3. If it is determined that safety is compromised by the use of non-OEM parts and the use of OEM parts significantly increase the safety of a motor vehicle, then s. 627.0653, F.S., could be amended to provide for insurance discounts for the use of OEM replacement crash parts. Financial incentives are currently provided for certain safety equipment, such as factory installed anti-lock brakes or factory installed airbags, among others.

C. Warranties

The statutes could be amended to require that specific warranty language be included in warranties provided for aftermarket crash parts and OEM replacement parts. The warranty language could be based on coverage as provided in the insurance policy, thus creating a distinct lineage of responsibility which would be clearly disclosed to the consumer.

D. Cost

No change in the current statutory provisions would continue to allow marketplace supply and demand competition in relation to the cost of OEM and non-OEM crash parts.

E. Insurance

1. The Florida Insurance Code could be amended to specifically require detailed loss cost data from insurers based on their experience relating to the payment for OEM replacement parts versus payment for non-OEM replacement parts.

2. The Florida Insurance Code could be amended to statutorily mandate that insurers write private passenger automobile coverage separately for the use of OEM replacement parts and for the use of non-OEM replacement parts when repairing a motor vehicle.

F. Quality

The current Illinois class action lawsuit may be the definitive answer to the debate on quality. How this court's ruling affects consumers and the debate in Florida is not so clearly defined. The effects of lawsuits filed in Broward County is also unknown. There is some sentiment that the debate on quality will go on until the end of time.

G. Disclosure

The current disclosure language of s. 501.33, F.S., is consistent with model legislation and other states' statutes on disclosure. No change to the current statutes would continue to require disclosure to the consumer when aftermarket crash parts are used in collision repair. Some feel disclosure and consent would create stronger protections for the consumer. Others feel disclosure and acknowledgment is more consistent with current disclosure provisions under the Florida Insurance Code.

A-P-P-E-N-D-I-X

**PART III
AFTERMARKET CRASH PARTS ACT**

- 501.30 Short title.
- 501.31 Legislative purpose.
- 501.32 Definitions.
- 501.33 Disclosure.
- 501.34 Enforcement.

501.30 Short title.--This part may be cited as the "Aftermarket Crash Parts Act."

History.--s. 1, ch. 89-241.

501.31 Legislative purpose.--The purpose of this part is to regulate the use of aftermarket crash parts by requiring disclosure when any use is proposed in an insurance estimate of a nonoriginal equipment manufacturer aftermarket crash part.

History.--s. 2, ch. 89-241.

501.32 Definitions.--As used in this part:

(1) "Aftermarket crash part" means a replacement for any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels.

(2) "Insurer" includes an insurance company and any person authorized to represent the insurer with respect to a claim and who is acting within the scope of the person's authority.

(3) "Nonoriginal equipment manufacturer aftermarket crash part" means an aftermarket crash part made by any manufacturer other than the original vehicle manufacturer or her or his supplier.

(4) "Repair facility" means a motor vehicle dealer, garage, body shop, or other commercial entity which undertakes the repair or replacement of those parts that generally constitute the exterior of a motor vehicle.

History.--s. 3, ch. 89-241; s. 633, ch. 97-103.

501.33 Disclosure.--In all instances where nonoriginal equipment manufacturer aftermarket crash parts are used in preparing an estimate for repairs, the written estimate prepared by the insurer or the repair facility, or both, shall clearly identify each such part. A disclosure shall be attached to, or included in, the estimate and shall contain the following information in no smaller than 10-point type: THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF CRASH PARTS SUPPLIED BY A SOURCE OTHER THAN THE MANUFACTURER OF YOUR MOTOR VEHICLE. THE AFTERMARKET CRASH PARTS USED IN THE PREPARATION OF THIS ESTIMATE ARE WARRANTED BY THE MANUFACTURER OR DISTRIBUTOR OF SUCH PARTS RATHER THAN THE MANUFACTURER OF YOUR VEHICLE.

History.--s. 4, ch. 89-241.

501.34 Enforcement.--

(1) Any violation of this part by an insurer shall be deemed a violation of the Unfair Insurance Trade Practices Act, part X, chapter 626.

(2) Any violation of this part by a repair facility shall be deemed a violation of the Florida Deceptive and Unfair Trade Practices Act, part II, this chapter.

History.--s. 5, ch. 89-241.